(1)

C.F. 1001

(3)

SINGLE BENCH

BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR

IN THE MATER OF — W.P No 566 2006

PETITIONER:

BHIKAM LAL YADAV, S/O KUSLU YADAV, GRAM BHAWARMARA POST SINGHAULA, DISTRICT, RAJNANDGAON.

VERSUS

RESPONDENTS:

1.CHHATTISGARH RAJYA SAHKARI VIPNAN SANGH MARYADIT, 880, CIVIL LINES, RAIPUR.

2.THE DISTRICT MARKETING OFFICER, CHHATTISGARH RAJYA SAHKARI VIPNAN SANGH MARYADIT, PURANA GANJ CHOWK, RAJNANDGAON (C.G).

3.CHETRAM DEHRIYA,
ADHYAKSH,
JAI BAJRANG HAMAL MAJDOOR SANGH,
PURANA GANJ CHOWK
RAJNANDGAON (C.G)

4.CHOTELAL DUBEY,
S/O LATE SHRI SOMDATT DUBEY, AGED 57 YEARS R/O CHHATTISGARH RAJYA SAHKARI VIPNAN SANGH MARYADIT, PURANAGANJ
CHOWK,RAJNANDGAON (C.G)

P.R. No. 492/06
Presented by Shri R.R. Kulshade
dated 22/1/06

26/01/06

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WRIT PETITION UNDER ARTICLE 226/227
OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN
APPROPRIATE
WRIT/ORDER OR DIRECTION AS DEEM FIT

(99) AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.566/2006

Bhikam Lal Yadav

Vs.

Chhattisgarh Rajya Sahkari

Vipnan Sangh Maryadit

Appearance:

Shri Pradeep Saxena, counsel for the petitioner.

Dr. N.K. Shukla, Sr. Advocate with Shri Dilip Dubey, counsel for respondents no.1, 2 & 4.

Shri Anoop Majumdar, counsel respondent no.3.

O R D E R
(24.7.2006)

SUNIL KUMAR SINHA, J

(1) By way of this writ petition, the petitioner has challenged the legality of awarding contract to respondent no.3 by work order Annexure P-IV which relates to labour work (Hamali Karya) in Dhan Bhandaran Center (hereinafter referred to as the "Collection Center") at Rajnandgaon pertaining to the year 2005-2006.

(2) The brief facts are that respondent no.1 floated a notice inviting tenders, on 10.10.2005, from licensed contractors for labour work (Hamali Karya) for their collection centers situated in the State of C.G. The proposed work was for the period commencing from 01.10.2005 and ending on 30.9.2006 (one year). The tender form shows that the rates were called for 16 different items referred to therein. The petitioner submitted his tender (Annexure P-III) and quoted his rates accordingly. The respondent no.3 also submitted the tender and he quoted a rate of Rs. 0.96 paise for item no.14 and against other 15 items he quoted as "00" (no claim for the said works). After receiving the tender, the respondent authority scrutinized the same and

thereafter the work at Rajnandgaon collection center was awarded to respondent no.3 namely Chaitram Daharia.

(3) Reply filed by respondents no.1, 2 and 4, vide para 9, would show that the respondent no.3 has quoted the lowest rate and the tender committee after considering the comparative rates has recommended to award the contract to him. According to them, the criteria adopted by the tender committee and process of selection thereon is contained in Annexure R/1-1. A perusal of the said document would show that after receiving the tenders for 8 collection centers of district Rajnandgaon, they were opened and scrutinized by the committee. After scrutiny, it was found that no tenderer had quoted lowest rate for all the 16 work items for which the tenders were called. It was observed by the Committee that out of 16 items, only three items are important in which almost 90-95% of labour work (Hamali Karya) was proposed to be done throughout the year. These works were (i) weighing of paddy, (ii) carrying of paddy bags and arranging them in order and (iii) filling of straw into bags and arranging them. Keeping in view the possibility that almost about entire work is to be done for the above 3 items, the rates quoted by the tenderers for above 3 items were scrutinized for each center and on the basis of such scrutiny, L-1, L-2 and L-3 for each center were selected. In center at Rajnandgaon, the rate of respondent no.3 was Rs.0.96 paise. The rate of the petitioner was Rs.1.65 P. and the rate of one Prakash Yadav was Rs.2.10 P. Therefore, after considering that the rate of respondent no.3 was the lowest, work order was issued in his favour.

(4) Learned counsel for the petitioner argued that the tender form of respondent no.3 would show that he has not quoted any rate for any other item except item no.14 as he has written "00" against all other items, therefore, his rate will be naturally low and in this manner, he has removed the possibility of competition and the work has wrongly been awarded to him. He submitted that the decision taken by the respondent authorities is arbitrary, unjust, irrational and is not in

accordance with law. He referred to various paragraphs of the decision rendered by the Apex Court in the matter of ***Tata Cellular –Vs- Union of India AIR 1996 S.C. 11***. He further argued that when the comparative chart of rates quoted was prepared, a note was made at the foot of the chart that the litigations have been filed by persons placed at Serial No.2 & 4 before Hon'ble the High Court and the Labour Court and the judgments are awaited. This has prejudiced the decision takers to exclude those persons from competition and they have not been considered. It was also argued that the authorities of respondent No.1, in fact, colluded with respondent no.3 and the respondent no.3, who has quoted "00" for as many as 15 items, was awarded the work in collusive manner.

(5) On the other hand, learned counsel for the respondents opposed these arguments and submitted that the decision is just and proper which cannot be interfered in writ jurisdiction of this Court. They also argued that the contract period is at the fag end and it would not be just and proper to disturb the situation prevailing from such a long period which is to complete on 30.9.2006.

(6) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(7) While dealing with the Tata Cellular case (supra), the Apex Court held that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. The Apex Court further held that there can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot

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be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. The Apex Court further held that the duty of the court is to confine itself to the question of legality. Its concern should be :

1 Whether a decision making authority exceeded its power ?

2 committed an error of law;

3 committed a breach of the rules of natural justice;

4 reached a decision which no reasonable Tribunal would have reached; or

5 abused its powers.

The Apex Court said that it is not for the Court to determine whether particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. The Apex Court said that shortly putting the broad grounds subject to addition of further grounds in course of time, upon which an administrative action is subject to control by judicial review can be classified as follows:

(i) Illegality: This means the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednes- bury unreasonableness

(iii) Procedural impropriety

The Apex Court also held that the principles deductible relating to scope of judicial review of administrative decisions and exercise of contractual powers by government bodies are :

(1) The Modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the

manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitations to tender is in the realm of contract. Normally speaking, the decision to accept the tender to award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair-play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

(8) If we apply the above principles, for testing the action undertaken by the respondents, in relation to point no.1, it would appear that a general notice for the entire state was issued by them on 10.10.2005 and there after the tender forms were distributed in the manner described therein and were received in the concerned District Offices. When the tenders pertaining to this district were opened it was found that respondent no.3 has quoted "00" (free of charge) for other items except item no.14 and he has quoted Rs.0.96 paise for this item. Other tenderers had also quoted various rates and the

petitioner has also quoted his rates accordingly. The argument that quoting no rate for other items removes competition leading to non-selection of the best candidate cannot be accepted in the facts and circumstances of this case. In fact this was a tender for 16 items of work and the person filling the tender is presumed to retain knowledge about frequency and density of particular kind of work and if, according to his best judgment, he comes to the conclusion that a particular kind of work will be more in contrast to another kindly of work, he in order to get the tender by keeping him at the lowest, may offer that if exigency arises, he will complete some work without charging a single pie for the same. If the tender is filled in with the above intention, it cannot be said that the action had impliedly removed the competition.

The manner of filling the tender form and also the manner of quoting the rate as "0.00"" against various items cannot be said to be strange for the respondents which is clear from the comparative chart of rates (Annexure P-1) filed by the petitioner himself. In this chart as many as 5 tenderers are there who have quoted "00" rate against various items and their tenders have also been considered. The action of considering the tenders in which the rates are quoted as "00" and thereafter awarding the tender on the basis of lowest rate quoted,by adopting a criteria of considering the rates in 3 items in which almost entire work is to be concluded, cannot be condemned. There appears to be no arbitrariness and the equality clauses are also not violated in such decisions.

(9) In general manner, accepting the tender of a lowest rate including the offer for working free of charge in some minor items, even otherwise appears to be a good policy if such a decision is not arbitrary, malafide, collusive or based on extraneous considerations. The reason is that in the government contract or in the contract of statutory bodies, huge amount of public money is involved and if the same is saved by the action of the Government, excluding above factors, that always aids in public interest which is one of the basic concepts of the welfare State. I do not find any such

factor in this case. The first argument advanced by learned counsel for the petitioner cannot be accepted.

(10) The second argument advanced by learned counsel for the petitioner can also not be accepted in view of the factual scenario of this case. How the decision for awarding the work has been taken by the respondent authorities has been placed on record vide respondents' document Annexure-R/1-1. This document no where contains that any importance has been given to the foot note endorsement made in the comparative chart (Annexure P-1) that some litigation is pending on the instance of tenderers mentioned in column Nos. 2 and 4. If no decision is given considering these entries, it cannot be said that these entries may have prejudiced the decision takers against the persons referred therein. As stated above, the decision was taken purely on the rates quoted by different tenderers and not on their conduct or records etc. This argument can also not be accepted and the same fails.

(11) So far as the argument based on collusion about quoting of rates as "00" in many items are concerned, these are based on no material on record. When as many as 5 tenderers out of 8 have quoted as "00" (free of charge) against many items haphazardly, how it can be said that the authorities had colluded with a particular tenderer namely respondent no.3 in this case. More over, when the decision was to be taken collectively by a committee comprising of 4 members and the criteria of selection was not known to anybody on the date of filling of tenders, as it was not decided till then, it cannot be said that such a collusion was possible. What process will be adopted regarding selection was not one man's job, but was a collective decision and unless all the participants of the tender committee had colluded with the respondent no.3, such an action was not possible. This is not the case of the petitioner that every one in the committee has colluded nor such allegations appear to be reasonable. There is no force in this argument and the same cannot be accepted.

(12) Considering the facts and circumstances of this case, particularly considering the grounds raised by the petitioner, I do not find any merit in this petition. This petition is dismissed.

There shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

Rao